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June 9, 2006

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**VIA HAND DELIVERY**

The Honorable Charles L.A. Terreni  
Chief Clerk/Administrator  
**Public Service Commission of South Carolina**  
101 Executive Center Drive  
Columbia, South Carolina 29210

803-252-3300  
2006 JUN 9 PM 2:10  
FBI - COLUMBIA

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service; Docket No. 2006-107-WS

Dear Mr. Terreni:

Enclosed for filing please find the original and ten (10) copies of Applicant's Answer to Petition to Intervene of Lake Trollingwood, Inc. and Motion to Dismiss Petition to Intervene in the above-referenced matter.

By copy of this letter, I am serving counsel for all parties of record with a copy of same and enclose a certificate of service to that effect.

I would appreciate your acknowledging receipt of this document by date-stamping the extra copy that is enclosed and returning it to me via my courier. If you have any questions or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/amw

Enclosures

cc: Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
Duke K. McCall, Jr., Esquire  
Newton Horr  
Jacqueline H. Patterson, Esquire

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-107-WS**

2006 JUN -9 PM 2:11  
COMMUNICATIONS SECTION  
PUBLIC SERVICE COMMISSION

IN RE:

Application of United Utility Companies,  
Inc. for adjustment of rates and charges  
and modifications to certain terms  
and conditions for the provision of  
water and sewer service.

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one (1) copy of **Applicant's Answer to Petition to Intervene of Lake Trollingwood, Inc. and Motion to Dismiss Petition to Intervene** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Shannon B. Hudson, Esquire  
Nanette S. Edwards, Esquire  
**Office of Regulatory Staff**  
1441 Main Street, 3rd Floor  
Columbia, South Carolina 29201

Duke K. McCall, Jr. Esquire  
**Leatherwood Walker Todd & Mann, P.C.**  
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1225 South Church Street  
Greenville, SC 292605

Newton Horr  
131 Greybridge Road  
Pelzer, SC 29669

Andrea M Wright  
Andrea M. Wright

Columbia, South Carolina  
This 9<sup>th</sup> day of June, 2006.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2006-107-W/S**

2006 JUN -9 PM 2:10  
PUBLIC SERVICE COMMISSION  
SOUTH CAROLINA

IN RE: )  
 )  
Application of United Utility Companies, )  
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water and sewer service. )  
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**APPLICANT'S MOTION TO DISMISS  
PETITION TO INTERVENE**

Applicant, United Utility Companies, Inc. ("UUC" or "Company"), pursuant to 26 S.C. Code Ann. Regs. R. 103-840 (1976), moves that the Commission dismiss the Petition of Lake Trollingwood, Inc. to Intervene ("Petition"). In support of its Motion, UUC would respectfully show unto this Honorable Commission as follows:

**INTRODUCTION AND BACKGROUND**

The instant docket involves UUC's current application for rate relief pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2005). The Commission, by letter to the applicant dated April 21, 2006, required UUC to publish and distribute by U.S. Mail a Notice of Filing and Hearing providing information relevant to this docket. Therein, the Commission specified that persons who wished to participate in this matter as a Party of Record should file a Petition to Intervene by May 22, 2006. On or about May 17, 2006, UUC received the Petition of Lake Trollingwood, Inc. to Intervene signed and executed by Mr. Newton Horr, identifying himself as the President of the Lake

Trollingwood Homeowners Association (“Association”). By letter dated May 19, 2006, the Commission made the Association a Party of Record, unless challenged. The Commission further stated that “the Commission’s Rules and Regulations and existing South Carolina law require participating by an attorney admitted to practice in South Carolina for the representation of the interests of any person or group of persons other than [Mr. Horr’s] individual interests.”

### **ARGUMENT**

The instant Petition should be dismissed as Mr. Horr, acting on behalf of the Intervenor, is not a licensed attorney in South Carolina, and the Petition to Intervene filed by him is, therefore, inappropriately before the Commission. Upon information and belief, Mr. Horr signed, executed and filed the instant Petition on behalf of the Association without having met the requirement of being an attorney admitted to practice law in this state. Mr. Horr is not listed in the South Carolina Bar Lawyer’s Desk Book, on the South Carolina Bar’s website directory or on the Martindale-Hubbell website.<sup>1</sup> The cover letter accompanying the Petition further identifies Mr. Horr as “president of the Lake Trollingwood Homeowners Association” and does not provide any indication that Mr. Horr is licensed by South Carolina to engage in the practice of law. Absent proof otherwise, UUC asserts that Mr. Horr’s capacity as the president of the Association does not endow him with the proper authority to represent this incorporated entity before the Commission.

Additionally, by filing this Petition with the Commission, Mr. Horr has unquestionably engaged in the act of representation of the Association. 26 S.C. Code Ann. Regs. R.103-804 (S) (1)

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<sup>1</sup> The South Carolina Bar Lawyer’s Desk Book contains a directory of all attorneys admitted to the South Carolina Bar. Similarly, the Bar has a website ([www.scbar.org/member/directory.asp](http://www.scbar.org/member/directory.asp)) with a searchable directory of South Carolina attorneys. Martindale-Hubbell ([www.martindale.com](http://www.martindale.com)) is a searchable database of attorneys nationwide.

defines "representation" as "[t]he act of serving as counsel for a party, or of serving as the authorized representative of a party, in a proceeding before the Commission." The regulation goes on to define those persons who may act in a representative capacity by stating "(a) An individual may represent himself or herself in any proceeding before the Commission; (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission." However, Mr. Horr meets neither of these exceptions. The Petition states that the Petitioner is Lake Trollingwood, Inc., a homeowner's association and Mr. Horr signed and executed the document as a "**Representative** for Lake Trollingwood, Inc." [Emphasis supplied.] Further, the cover letter to the Association's Petition states that Mr. Horr, as president of the Association "**represent[s]** residents in the Lake Trollingwood allotment in southern Greenville County." [Emphasis supplied.] He also states that he "will appear and testify **on behalf of** the Trollingwood subdivision." [Emphasis supplied.] Stated previously, Mr. Horr is neither a licensed attorney nor appearing in an individual capacity representing his own interests, but has filed the instant Petition on behalf of the Association in a representational capacity.

The issue of representation of a party by persons not licensed to practice law in South Carolina has been addressed by the Commission on a number of occasions. In Order No. 2004-431, issued on September 13, 2004, in Docket No. 2004-249-T, the Commission stated that "officers or individuals employed by a corporation which seeks to be a party in any action before the Commission must be represented by an attorney licensed to practice in South Carolina." In Docket No. 98-451-T, the Commission issued its Order No. 98-988 holding "whereas an individual may represent himself or herself, any other type of party, **including a corporation**, needs representation by an attorney when putting on a case." [Emphasis supplied.] Further, "[i]n light of the quasi-judicial

nature of this Commission, the Commission's own lengthy rules of practice, and the fact that under Reg. 103-870 "(t)he rules of evidence as applied in civil cases in the Court of Common Pleas shall be followed" in proceedings before this Commission, we find that it is not in the best interest of ensuring the efficient operation of hearings before this Commission to allow non-attorneys to represent parties in proceedings before this Commission." [Order No. 2004-431 at 2-3.]

As well, the Commission has directly ruled on this issue with respect to Petitions to Intervene. In Docket No. 2003-162-T, three separate corporations filed petitions to intervene in a matter relating to an application of Coastal Moving and Storage, Inc. for a Class E Certificate of Public Convenience and Necessity. Each petition was signed and executed by a corporate officer or representative not authorized to practice law in South Carolina, including a General Manager and President. The applicant in that action moved to dismiss the petitions to intervene on the grounds that the persons filing those petitions had engaged in the unauthorized practice of law. The Commission granted the Motion to Dismiss finding these persons were not attorneys, and that the Commission "has not, by regulation authorized persons not licensed to practice law in South Carolina, to appear and represent clients before the Commission." [Order No. 2003-550 at 3, issued on September 8, 2003, in Docket No. 2003-162-T.] "The 'practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings...'" [Order No. 2003-550 at 4, *quoting State v. Despain*, 460 S.E. 2d 576, 577-8 (1995).] The Commission further found that "[a] pleading includes a 'petition' as defined by 26 S.C. Code Ann. Regs. 103-804(F)." [Order No. 2003-550 at 4.]

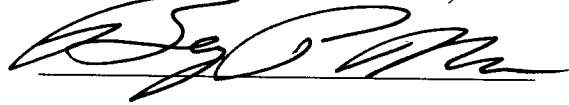
The Commission has also recognized that it "does not regulate the practice of law in the State of South Carolina and is, therefore, not the proper forum to determine whether the representation of a

party before this Commission in fact constitutes 'the practice of law' requiring representation by a licensed attorney." [Order 2004-431 at 2.] In so holding, the Commission specifically declined to amend its rule of practice authorizing such representation, citing instead Rule 410(d) SCACR providing "[n]o person shall engage in the practice of law in South Carolina who is not licensed by this Court and a member in good standing of the South Carolina Bar except as otherwise provided in the rules of this Court." Therefore, Petitions to Intervene, which are filed on behalf of someone other than an individual, must be signed by an attorney. As Mr. Horr is not a licensed attorney in South Carolina, the Petition to Intervene filed on behalf of the Association is improper. The Petition should be dismissed in accordance with the Commission's clearly established precedence as it is in violation of the Commissions regulations and the South Carolina Rules of Civil Procedure. See 330 Concord Street Neighborhood Ass'n v. Campsen, 309 SC. 514, 424 S.E. 2d 538 (Ct. App. 1992).

### **CONCLUSION**

Having fully set forth its motion, UUC respectfully requests that Lake Trollingwood, Inc.'s Petition to Intervene be dismissed.

**WILLOUGHBY & HOEFER, P.A.**



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Post Office Box 8416  
Columbia, South Carolina 29202-8416  
803-252-3300  
Attorneys for Applicant

Columbia, South Carolina  
This 9<sup>th</sup> day of June, 2006